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**SERVICE DATE - NOVEMBER 17, 2000**

**SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423**

**ENVIRONMENTAL ASSESSMENT**

AB-303 (SUB-NO. 25X)

Wisconsin Central Ltd. Petition for Abandonment in Langlade,  
Menominee and Shawano Counties, Wisconsin

**BACKGROUND**

In this proceeding, the Wisconsin Central Ltd. (WCL) has filed a petition under 49 U.S.C. 10502 seeking exemption from the requirements of 49 U.S.C. 10903 in connection with the abandonment of its railroad line located between milepost 280 north of White Lake and milepost 314.3 north of Shawano, in Langlade, Menominee and Shawano Counties, Wisconsin, a distance of 34.3 miles. A map depicting the rail line in relationship to the area served is appended to the report. If the exemption becomes effective, the railroad will be able to salvage track, ties and other railroad appurtenances, and to dispose of the right-of-way.

**Contacts and Procedures**

WCL has submitted an environmental report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage<sup>1</sup> and disposition of the right-of-way. The railroad has served the environmental report on a number of appropriate Federal, state, and local agencies as required by the Board's environmental rules at 49 CFR 1105.7(b). We have investigated the record in this proceeding. Also, we have consulted with appropriate agencies and individuals to verify the railroad's report and to obtain additional information and comments regarding the potential environmental effects of the proposed abandonment. Contacts have included Wisconsin Department of Natural Resources, State Historical Society of Wisconsin, National Park Service, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Department of Agriculture, Wisconsin Coastal Zone

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<sup>1</sup>Defined as removal of track and ties.

Management, Wisconsin Department of Transportation, Bureau of Indian Affairs, Menominee Indian Tribe of Wisconsin, and Stockbridge-Munsee Band of Mohican Indians.

## **ENVIRONMENTAL REVIEW**

This Environmental Assessment (EA) evaluates the potential environmental effects that could result from the proposed abandonment. This EA will evaluate the environmental impacts of salvage of the line and how best, if necessary, to mitigate any potential impacts of track salvage within the right-of-way<sup>2</sup>. The Board's Section of Environmental Analysis (SEA) has prepared this document in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321), the Board's environmental rules (49 CFR Part 1105) and other applicable environmental statutes and regulations.

## **CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS**

In order to establish regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that may significantly or uniquely affect Indian tribal governments, the Board, as an independent regulatory agency, ensures that no action is taken or resources irretrievably committed until the concerns of affected Indian Tribal Governments are fully explored pursuant to Executive Order 13,084, *Consultation and Coordination with Indian Tribal Governments* issued May 14, 1998.<sup>3</sup> In this regard, the SEA, on behalf of the Board, has contacted the Indian Tribal governments and WCL has provided written information on

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<sup>2</sup>The SEA notes here that the Board's jurisdiction for imposition of mitigating conditions is limited to activities and impacts with railroad the right-of-way.

<sup>3</sup>The STB, as an independent regulatory agency, is not decisionally part of the executive branch of the Federal government. As an independent regulatory agency, the Board is not legally bound by Executive Orders, nevertheless, the Board makes every effort to comply with them. Specifically, the Board is familiar with the Executive Order applicable to consultation and coordination with Indian Tribal Governments and incorporates the intent of this order into our environmental process. Thus, although we are not required to and have not prepared a formal Indian policy, we do make every effort to comply with the intent of applicable Executive Orders for projects subject to our authority.

the proposed abandonment and a request for comments to the Menominee Indian Tribe of Wisconsin (Menominee Tribe) and the Stockbridge-Munsee Band of the Mohican Nation (Stockbridge-Munsee Band) regarding the WCL petition for abandonment.

The Menominee Tribe has provided written comments to the Board's SEA which have been considered in the preparation of this EA. No response has been received from the Stockbridge-Munsee Band. Further, the Board's SEA has consulted with the Midwest Regional Office, Bureau of Indian Affairs (BIA) regarding the proposed abandonment and provided notice of the preparation of this EA.

### **Land Use**

The width of the right-of-way is approximately 100 feet. Between White Lake and Neopit, the line goes through a dense wooded area. The lands adjacent to the line are primarily used for logging purposes; providing wood pulp for area paper mills or lumber for construction. South of Neopit the land adjacent to the line is not as dense, opens up slightly, and approximately half is used for agriculture, cultivation and pasturing.

#### **Local Land Use Plans**

The Wisconsin Department of Natural Resources (WDNR) has expressed an interest in acquiring the entire 34.3 mile corridor between White Lake and Shawano for a recreational trail, if the line is abandoned. WDNR notes that the corridor is identified in the State Trails Plan and the Northeast Region Trails Plan as a future State Trail segment. The Menominee Tribe has also expressed interest in using parts of the railroad right-of-way within the Reservation for local public roads. The Menominee Tribe is aware of the WDNR interest in the right-of-way and has notified the SEA and WDNR that the Menominee Tribe administers a Forest Management Plan and Land Use Plan for the Menominee Reservation and must approve any future use of land on the Reservation.

Although, WDNR and the Menominee Tribe have expressed an interest in future reuse of the right-of-way, neither have submitted a formal request for an alternative public use condition or a certificate of interim trail use (CITU). Additional requirements on public use and CITU requests are discussed under separate headings in this document as Trails Use and Public Use later in this EA.

The BIA, in telephone comments to the SEA, expressed concern regarding the Board's policy of issuance of a CITU under the Trails Act without extensive environmental review prior to a grant of abandonment authority. The BIA requested that this issue be addressed during the environmental review process and before any grant of abandonment authority. Below, is a brief explanation of the Trails Act and the Board's policy on the issuance of CITU's.

#### The 1995 Trails Act and the Board's Environmental Review

The Trails Act, 16 U.S.C. 1247(d), gives interested parties the opportunity to negotiate voluntary agreements to use, for recreational trails, railroad rights-of-way that otherwise would be abandoned. The Act is intended to preserve railroad rights-of-way for future railroad use. Many railroads do not own the land on which their track lies. Rather, they have easements over the land of adjoining property owners. Unless those easements are converted to a trail under the Trails Act, the railroad's easement rights are extinguished, and the land may revert to the adjoining property owners when the Board authorizes the abandonment of the line.

Under the Trails Act and the Board's implementing procedures (49 CFR 1152.29), a state or local government or private organization can request a trail condition<sup>4</sup> (known as a CITU) to begin the trail use process on a line approved for abandonment if the rail sponsor agrees to railbanking and provides a statement of willingness to assume responsibility for managing the right-of-way, for any legal liability arising out of its use, and for the payment of taxes. If the railroad agrees to negotiate, and no offer of financial assistance to continue rail freight service on the line is received, the Board will impose a CITU, which gives the rail sponsor time to negotiate an agreement with the railroad for interim trail use/railbanking. The Board has no involvement in the negotiations and does not analyze, approve, or set the terms of trail use agreements. The Board is not authorized to regulate activities over the actual trail. In short, the Board's jurisdiction under the Trails Acts is ministerial.

The Board does not conduct an environmental review of a potential conversion to interim rail use/railbanking because it does not exercise sufficient Federal control to render Rails-to-Trails conversions "major Federal actions" under NEPA.

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<sup>4</sup>Applicable in abandonments processed under 49 U.S.C. 10903.

## **TRANSPORTATION**

The environmental report submitted by WCL states that there are eight active shippers on the line: Besse Forest Products (Besse), Robbins, Inc. (Robbins), Menominee Tribal Enterprises (Menominee), Bedrock Express Ltd. (Bedrock), Farm Bureau Cooperative (Farm), Keith Bentley Trucking (Bentley), Timber Products Company (Timber) and Gresham Cooperative (Gresham). In 1999<sup>5</sup>, WCL moved 204 cars for Besse, 14 cars for Robbins, four cars for Menominee (40 rail cars were moved as of 9/12/00), Bedrock, a new customer, moved 53 cars as of 9/12/00, 116 cars for Farm, 14 cars for Bentley, 24 cars for Gresham, and eight cars for Timber. Other periodic shippers used the line in 1999: Mead Publishing Paper Division (9 cars), Packaging Corporation of America (17 cars), International Paper (18 cars), Wolf River Valley Seeds (3 cars) and eight miscellaneous cars. WCL states that Besse, the largest shipper on the line (204 carloads), is now served from its station in Wausau. WCL has moved no cars for Besse on this line in 2000.

Trucks are the most probable alternative mode for transporting existing rail traffic in the area if the abandonment is approved. For purposes of calculating a worst-case scenario for diversion of existing rail traffic to truck traffic, SEA will assume that all traffic, including periodic movements, that moved over the line in 1999 will be diverted to truck. Based on reported carload movements reported by WCL<sup>6</sup>, 439 carloads originated or terminated on the line. If the traffic now moving by rail is diverted to truck, approximately 2,458 truck trips annually or 10 trucks per day would be added to area roadways.<sup>7</sup>

Similarly, if we assume that the diversion of the 204 carloads previously shipped by Besse over this line have already been diverted to truck or an alternative rail line, SEA estimates that approximately 5 additional trucks per day would be added to area roadways instead of 10 under the worst-case scenario.

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<sup>5</sup>The base year 1999 will be used for purposes of calculating the impact of diversion of traffic from rail to truck.

<sup>6</sup>WCL certifies as part of its petition for abandonment exemption that these numbers are correct.

<sup>7</sup>SEA used a conversion rate of 5.6 trucks per railcar to calculated the diversion of railcars to trucks. A 240 workday was used to calculate the per day conversion.

SR 55 northbound and SR 47 westbound cross the Menominee Reservation and would likely receive truck traffic diverted from this rail line. SR 55 has undergone some recent infrastructure upgrades. It is unlikely that the diverted truck traffic would result in significant impacts to local traffic patterns given the rural nature of the affected communities. WCL states that truck movements associated with Besse now move over SR 64, north of the two Indian Reservations.

The Wisconsin Department of Transportation (WisDOT) has expressed concern regarding the proper cleanup of debris during salvage activities. WisDOT comments that WCL must comply with WisDOT Abandoned railroad Line Salvage and Clean-up Policy/Standards/Procedures to ensure proper cleanup of salvage debris along the line.

WisDOT further states and SEA agrees that if the line is abandoned, the railroad should protect surveying benchmarks, monumentation and mapping information for the segment until the National Geodetic Society has evaluated there historic value. SEA will recommend a condition in this proceeding to allow the National Geodetic Society 90 days from the issuance of any decision granting abandonment authority in this proceeding to survey the line for any historical benchmarks or monumentation.

## **Air and Noise Quality**

### Standards

The Board has established air quality and noise level threshold levels set forth at 49 CFR 1105.7 (e)(5)(ii) and (e)(6). These thresholds are guidelines that are considered, along with other supporting information, to determine whether the air pollution and noise levels generated by rail traffic diverted to alternative modes warrant detailed analysis. The applicable threshold level for an attainment area when assessing air pollution is an increase in rail traffic of a least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains per day on any segment of the rail line, or an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment.

### Air

The affected area is in attainment with national ambient air quality standards. The impact of adding an additional 5 to 10 trucks per day to the area highway network is not expected to result in significant annual increases in emissions of hydrocarbons, carbon monoxide, and nitrogen oxides. Further the increases would not be concentrated in one place, but would be

spread out over the length of the trip and over more than one route. Impacts to local and regional ambient air quality are not expected be significant.

#### Noise

The project area is largely rural. In most of this area, the major noise source is traffic on local roads, train operations, and horn noise. The diversion of existing rail traffic to truck traffic would likely have only a minor impact on noise levels in this area. Train horn and wayside noise (that is, the noise generated by the operation of the train rather than by the sounding of the horn) would be eliminated.

Noise disturbances during salvage operations would be short-term. The noise generated from salvaging equipment would generally be less than from trains that currently travel over this line. The additional truck traffic on affected roads would result in insignificant increases in noise levels.

#### **Wetlands and Water Quality**

The Wisconsin Department of Natural Resources (WDNR) commented that salvage should not affect any designated wetlands as they currently exist. However, WDNR comments that the original construction of the roadbed resulted in the filling of wetlands along the corridor. Original drainage patterns were altered, resulting in changes to the local hydrology. WDNR states if future use of the right-of-way is not for transportation or trail purposes, all fills should be removed and the original contours and vegetation re-established. Additionally, WCL should obtain all necessary US Army Corps of Engineer (CORPS) permits required to work in wetlands and local rivers and streams.

The Menominee Tribe states that WCL must adhere to the following conditions to salvage in or near waterways on the Reservation: (1) obtain all necessary CORP water permits, including a permit from the Tribe to work around rivers and streams on the Menominee Reservation; (2) maintain proper erosion control measures during and after any track, tie, bridge or culvert removal; (3) develop an erosion control plan and make it part of the project plans and specifications; (4) restore disturbed soil to original grade and re-seeded as soon as possible, native species should be used to re-vegetate, where appropriate, (5) follow Best Management Practices to adequately protect water quality; and (6) protect the integrity of the West Branch of the Wolf River in Neopit during salvage activities.

SEA concurs and adopts the findings of WDNR and the Menominee Tribe with regard to water quality and wetland impacts within the railroad right-of-way and recommends appropriate conditions as outlined below.

### **Solid and Hazardous Waste**

The Menominee Tribe and WDNR have expressed concern regarding historical solid waste debris in wetlands (ties, rail, and rail equipment) on and near the right-of-way. The Menominee Tribe requests that solid waste, in an near the right-of-way, be removed and soil/water samples taken by a certified laboratory to determine if contaminants are present. The Tribe states that for compliance with the Resource Conservation and Recovery Act (RCRA)<sup>8</sup> Subtitle C and D for waste, the Menominee Tribe will physically inspect the right-of-way. The BIA also expressed concern about the potential transfer of property to the Indian Tribes without a certification that the land was free of contaminants that would affect its reuse.

The SEA consulted with WCL regarding any past spills and discharge of potentially hazardous materials along the line. WCL certifies that they are not aware of any contaminants that will pose existing or future concerns to the salvage and future disposition of the right-of-way. The SEA is not aware of any known active hazardous waste site in the area.

### **Biological Resources**

The US Fish and Wildlife Service (USFWS) determined that due to the nature and location of the proposed salvage activities and future disposition of the right-of-way, the identified species in Langlade, Menominee, and Shawano Counties will not be affected by the proposed abandonment (see Attachment A). The USFWS further determined that no further action on the project was required by the 1973 Endangered Species Act, as amended.

### **Cultural and Historic Resources**

The State Historical Society of Wisconsin (Historical Society) has reviewed the proposed abandonment as required for compliance with Section 106 of the National Historic Preservation

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<sup>8</sup>RCRA regulates discharges into groundwater and some air emissions (e.g., incinerators) and general waste management, including spills. RCRA focuses on current and future activities, with some notable exceptions such as monitoring, analysis and testing.



Act. The Wisconsin Historical Society advises that there are no archeological or historical properties listed in the National Register of Historic Places (National Register) within the area of potential effect of the proposed undertaking. Furthermore, the Historical Society is not aware of any properties that may be eligible for the National Register in this area.

The Chairman<sup>9</sup> of the Stockbridge-Munsee Band of the Mohican Nation has not responded, to the request submitted by WCL, on behalf of the SEA<sup>10</sup>, for information of a historical nature affecting the line. The Chairman of the Menominee Tribe advises that when archeological sites are discovered during demolition of the railroad, work must be stopped and the Menominee Tribal Historic Preservation Officer notified. The Menominee Tribe comments that the requirements of the National Historic Preservation Act must be followed.

Given the potential for unearthing archeological items of a potentially historic nature on the two Reservations and the Menominee Tribe's concerns regarding Section 106 compliance, the SEA recommends imposition of the following Section 106 condition. If any archeological items are uncovered during salvage, WCL shall immediately discontinue all salvage activities on the portion of the line in the area of the discovery and notify the Stockbridge-Munsee Band, the Menominee Tribe and Historical Society in compliance with the Section 106 process of the National Historic Preservation Act, 16 U.S.C. section 470f.

### **Alternatives to Abandonment**

Alternatives to the proposed abandonment include denial of the application with a requirement to maintain full service on the line, partial abandonment and discontinuance of service. Denial of the application to abandon the line would nullify any potential impact of abandonment on: (1) availability of direct rail access to shippers, (2) impacts associated with the diversion of rail traffic to trucks, (3) the future use of the right-of-way, and (4) potential archeological properties that could be impacted during salvage of the line. Partial abandonment is not a feasible alternative because the right-of-way would not be available for future public use and existing traffic would not support the line. Discontinuance of service would mean that shippers on the

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<sup>9</sup>The Chairman of Indian Tribes generally serve as the Tribal Historic Preservation Officer.

<sup>10</sup>The SEA also placed a telephone call to the Stockbridge-Munsee Band, Chairman, to initiate Section 106 consultation. No response was received.

line would no longer have rail service and the line would not be available for future recreational use as desired by the Wisconsin Department of Natural Resources and the Menominee Tribe.

## **CONDITIONS**

The SEA recommends that the following conditions be placed on any decision granting abandonment authority:

1. WCL shall obtain all necessary US Army Corps of Engineers permits prior to beginning any work in wetlands or waterways along the line pursuant to the Clean Water Act 42 U.S.C. 7401.
2. WCL shall obtain any required local water permits, including any permits required from the Menominee Tribe to work around rivers and streams on the reservation.
3. WCL shall use proper erosion control measures during salvage and these measures must be maintained during any track, tie, bridge or culvert removal. An erosion control plan for the right-of-way should be developed and made part of the project salvage plans and forwarded to WDNR for review.
4. WCL shall consult with WDNR regarding (1) the need to restore all of areas of disturbed soil within the right-of-way, (2) restoring the right-of-way to its original grade, if not used for alternative public use or a trail, and (3) re-seeding the right-of-way, as soon as possible, using native species where appropriate.
5. WCL shall follow Best Management Practices in streambeds to adequately protect water quality.
6. WCL shall protect the integrity of the West Branch of the Wolf River in Neopit during salvage.
7. WCL shall consult with the WDNR regarding whether fills should be removed and the original contours and vegetation re-established, if future use of the right-of-way is not for transportation or trail purposes.
8. Given the potential for unearthing archeological items of a historic nature on the Reservations, and the Menominee Tribe's concern regarding Section 106 compliance during salvage activities, the SEA recommends imposition of the following Section 106 condition should archeological items be uncovered during salvage activities: WCL shall immediately discontinue all salvage activities on the line within Reservation and notify both

the Stockbridge-Munsee Band, the Menominee Tribe and the Historic Society of their discovery in compliance with the Section 106 process of the National Historic Preservation Act, 16 U.S.C. section 470f.

6. WCL shall notify the National Geodetic Survey prior to any salvage activities that will disturb or destroy any geodetic markers on the right-of-way. WCL will allow the National Geodetic Society 90 days from the issuance of any decision granting abandonment authority in this proceeding to survey the line for any historical benchmarks or monumentation pursuant to a request by the WisDOT.

7. The WisDOT has expressed concern regarding the proper cleanup of debris during salvage activities. Therefore, we recommend, that WCL comply with WisDOT Abandoned railroad Line Salvage and Clean-up Policy/Standards/Procedures to ensure cleanup of salvage debris.

## **CONCLUSIONS**

Based on the information provided from all sources to date, we conclude that, as currently proposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

## **PUBLIC USE**

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

## **TRAILS USE**

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of the petition for exemption in the

Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

## **PUBLIC ASSISTANCE**

The Board's Office of Public Services (OPS) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPS directly at (202) 565-1592, or mail inquiries to Surface Transportation Board, Office of Public Services, Room 848, Washington, DC 20423.

## **COMMENTS**

If you wish to file comments regarding this environmental assessment, you should send an **original and two copies** to Vernon A. Williams, Office of the Secretary, Room 711, Washington, DC 20423, to the attention of Phillis Johnson-Ball, who prepared this environmental assessment. **Please refer to Docket No. AB-303 (Sub No. 25X) in all correspondence addressed to the Board.** If you have questions regarding this environmental assessment, you should contact Phillis Johnson-Ball at (202) 565-1530.

Date made available to the public: 11/17/00.

**Comment due date: 12/18/00.**

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams  
Secretary

MAP AND ATTACHMENTS TO BE SCANNED